



Transfer of Development Rights Incentives That Jurisdictions Can Provide for Developers

Developers are Key to a Successful TDR Program

Developers are essential to creating the market for transferable development rights (TDR). Finding the right incentives for developers will help create a robust market. Program simplicity and effective transfer ratios that enable developers to increase profit from their development project via TDR are key ingredients to successful TDR. A city or county can save the developer money and time and further increase profits by providing certainty and reducing permit timelines for projects in designated receiving areas.

This paper describes incentives a city or county can provide to make TDR an attractive option for developers. These include:

- Incentive zoning for TDR and how it relates to other incentives
- By-right permitting for TDR
- State Environmental Policy Act (SEPA) tools such as up-front environmental review of receiving areas and SEPA categorical exemptions for TDR receiving areas
- Subarea planning for TDR receiving areas
- Infrastructure and public amenity investment in receiving areas
- Tax and fee policies such as multifamily tax abatement district or impact fee waivers for development with TDR credits
- Other permit streamlining approaches for TDR

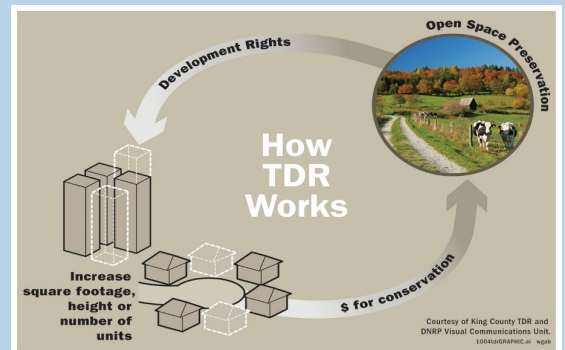
Incentives for Developers to Participate in TDR

What will motivate developers to participate in TDR? A developer will pay for TDRs if it increases their project revenue or reduces costs and risk. Depending on the market, a variety of incentives could be appropriate to encourage developer participation. The key to answering this question is to discuss the issue with the intended users. Outreach to developers will help a jurisdiction inform policy and design regulations that are simple and easy to use. If a program is too complex, developers will not have the time to figure it out and be assured that it will work. Any delay to a construction project during the permitting process can have compounding effects on the cost of financing. For developers, time is money and certainty is critical to estimating costs.

Any incentive for developers must also be good for the community. Developer incentives should be grounded in good planning and clear, up-to-date development codes that provide for quality development

TDR 101

Transfer of development rights (TDR) is a market-based land use tool that cities and counties use to grow in compact communities while conserving resource and open space lands.



In a TDR program, communities identify areas they want to conserve and those that should grow. Through voluntary transactions, resource and open-space landowners sell their right to build homes on their land to developers in urban areas. Landowners receive money from the sale and continue to own and use their land, while developers in urban areas pay for the right to build more densely than zoning



and reasonable developer expectations. Good planning and understandable development regulations provide certainty with clear guidance and process, existing or planned capital facilities to support development, and early and continuous public participation to increase citizen and neighborhood buy in. Within this context, local governments should consider the following optional incentives for developers to use TDR.

I. Incentive Zoning

APPROPRIATE INCENTIVE STRUCTURES

Zoning incentives for TDR must fit within the existing incentive structure and should be designed to harmonize with other incentives. A successful TDR program will provide zoning incentives that appeal to developers and do not compete directly with other zoning incentives the city or county may already have or be putting in place. A successful program will have a clear and simple menu of incentives that is easy to understand. If the city or county has already adopted a zoning incentive structure, it will need to determine how incentives for TDR fit within this structure. For example, if there are already bonus density incentives for affordable housing the community must determine how TDR fits with these existing incentives. Tiering of incentives according to the priorities of the community is an approach that a few cities have taken. The colored boxes show how a number of jurisdictions are already successfully incorporating TDR into their incentive zoning structures.

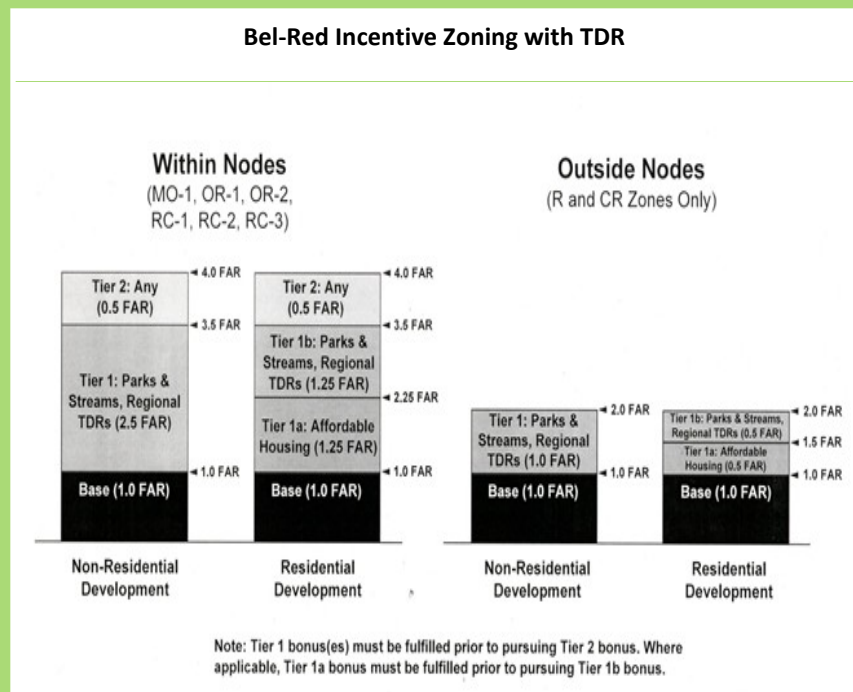
MARKET INCENTIVES/TRANSFER RATIOS AND CONVERSION COMMODITIES

Bellevue's Bel-Red Corridor Plan

The City of Bellevue adopted a sub-area plan for the Bel-Red Corridor that includes TDR as part of the floor area ratio, or FAR density, incentive. The plan creates a tiered program of incentives for residential and non-residential development within and outside of specific "nodes" identified in the zoning code.

Tier 1 bonuses must be fulfilled by the developer before they can pursue Tier 2 bonuses. That is, a development within a single project limit must first fully utilize Tier 1 amenity bonuses before using Tier 2 amenity bonuses. To achieve the maximum FAR for the district, amenities from Tier 1 and Tier 2 must be provided at the specified ratio for every additional square foot to be built beyond the base limit.

Regional TDR credits from the county are available in Tier 1 within zoning nodes and within residential zones outside the nodes. Outside the identified nodes, only Tier 1 may be pursued. Additional FAR for development in nodes is capped at 4.0, and outside nodes at 2.0 FAR.



What the receiving area jurisdiction chooses to allow a developer to buy with TDR credits in the receiving area should be an incentive in and of itself. Market incentives that result in an increased dollar value for TDR credits will be more attractive to developers. One market incentive has been called an enhanced transfer ratio. The transfer ratio is what the purchase of a TDR credit buys the developer in a designated receiving area. An enhanced transfer ratio is when more than one dwelling unit is allowed in the receiving area for each dwelling unit precluded in the sending area.

Zoning incentives, or conversion commodities, can provide a variety of regulatory incentives for developers within the community's existing regulatory and incentive structure other than additional dwelling units. Zoning incentives/conversion commodities can be in the form of increased residential density (i.e., more units), but they can also be in the form of additional floor area ratio (FAR), increased building height, reduced parking requirements, more impervious surface, more lot coverage, or reduced setbacks. A market analysis that involves developers is a key first step to determining the market for zoning incentives.

A literature search by Rick Pruetz and Noah Standridge indicated that all but 5 of 20 programs studied used enhanced transfer ratios, conversion factors (commodities), or both.

Advantages

- A market analysis will help ensure the success of the program because the market will determine what types of development incentives the development community has an interest in.
- Allowing TDRs to be converted to uses other than increased residential density should broaden the TDR market.

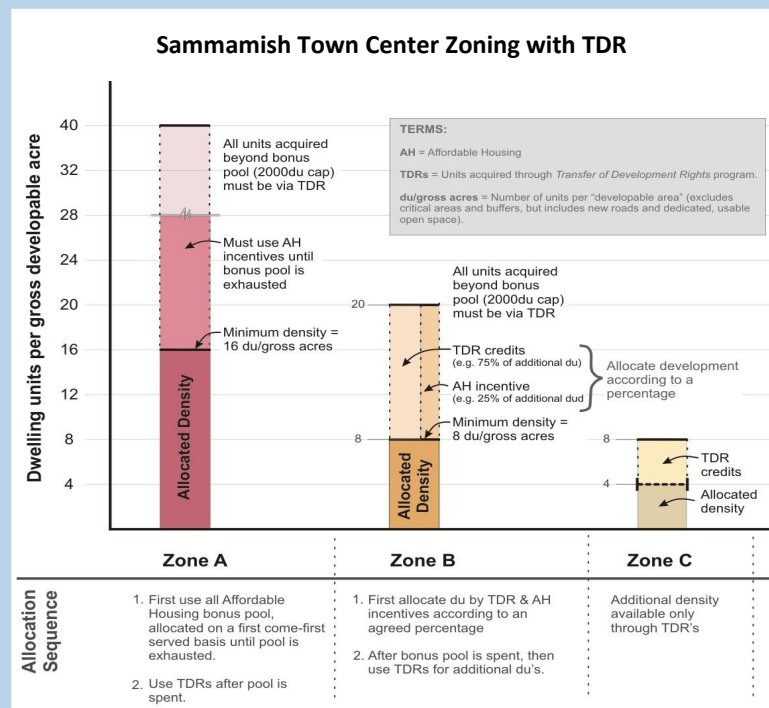
Disadvantages

- The receiving area market may not be receptive to the type of development the community wants.

Sammamish's Town Center Plan

The City of Sammamish's Town Center (TC) plan provides incentives for increasing density above the allocation, through the provision of affordable housing and TDR. TDRs may come either from unin-corporated King County (through the King County TDR program) or from qualifying sites within the City.

- In the TC-A zone, the developer must first use affordable housing incentives until the bonus pool is exhausted before acquiring additional units through the acquisition of TDRs.
- TDRs may be also be used in the TC-B and TC-C zones, without a requirement to use affordable housing first.



Seattle's TDR Program

Another approach was taken by Seattle with its internal TDR program, which is part of an incentive program that permits the use of both floor area bonuses and TDR. Developers may use TDR to achieve additional density above the base floor area ratio (FAR) for commercial uses in certain Downtown Office Core (DOC), Downtown Retail Core (DRC), and Industrial/Commercial zones in South Lake Union. Lots where low-income housing is preserved are eligible "housing TDR sending sites." Other eligible sites include those with designated landmark buildings, public open spaces, or art facilities. Seattle has

prioritized its downtown TDR program by allowing the greatest share of the extra floor area allowed through the program to be gained through the use of the affordable housing/childcare bonus and/or TDR from low-income housing (up to 75% of the total floor area allowed above the base FAR).



Also, for the extra floor area that must be gained through non-housing incentives (the remaining 25% of the extra floor area allowed above the base FAR), TDR from Landmark structures must be used if it is available in the Landmark TDR bank. Seattle had an interlocal agreement with King County to accept rural TDR transfers that sunset in 2008. The original interlocal expired June 20, 2005, but was extended for 3 years beyond the date that the Denny Triangle TDC Extension Agreement was signed (July 28, 2005). The City is currently working with King County to include rural TDR transfers from the County in its TDR program. Seattle will have to decide how rural TDR fits with the other priorities.

MORE MIXED-USE ZONING

Planning in the receiving area could provide for relaxation of single use zoning and allow more mixed use in TDR receiving areas. Many of the cities currently planning for TDR receiving areas are considering mixed-use zoning. Cities that have adopted mixed-use zoning in receiving areas include Bellevue and Snohomish.

Advantages

- Allows higher density and broader mix of residential uses.
- Provides shared parking agreement opportunities between land uses.
- Can increase pedestrian access from residential to services.

Disadvantages

- Potential added building construction expenses for the separations required between residential and non-residential.
- Parking noise, such as lot sweeping, commercial deliveries and refuse pick up, may impact residents.
- Shared parking for more than one use cannot be counted easily.



II. “By Right” Permitting

“By right” permitting means the development code provides that TDR project applications are only subject to administrative review rather than a legislative or quasi-judicial (e.g., hearing examiner) review. Administrative review allows a local planning official to approve a project without public hearings or council action. As in the King County example described below (See “Clear, Fixed and Certain Transfer Ratios”), it also allows increased density with the purchase of TDR credits without any additional approvals. Providing certainty early in the permit process without a lot of decision variables will be more attractive to developers.

By linking TDR to a “by right” process, developers will benefit from predictability and time savings. The value of these benefits can often be sufficient motivation for purchasing development rights.

Washington State law requires that certain permits have a quasi-judicial public hearing. Permits that can be considered for administrative review in conjunction with use of TDR include:

- Building permits
- Tree cutting permits
- Fill and grade permits
- Sign permits
- Site plan approval
- Design review approval (some)
- Environmental permits (some)

Permits that do require quasi-judicial approval can still be streamlined if there is no requirement in the local development regulations that use of the TDR be subject to the quasi-judicial approval. Permits that are quasi-judicial under state law or most local codes include:

- Preliminary and final plats
- Conditional use/special use permits
- Planned Unit Development, Planned Residential Development
- PRRs and Master Use Permits
- Shoreline permits
- Site specific rezones
- Appeals of administrative decisions
- Variances and waivers

Advantages

- More certainty is provided to developers on the amount of TDR credits allowed and how these translate into additional heights, units, etc.
- Less negotiation with the jurisdiction on whether the TDR will be allowed and under what exchange ratios.
- Time and money savings will be appealing to developers.

Disadvantages

- The city or county will need to ensure the public is engaged and understands future development potential with TDR, as they will not have a significant opportunity to engage in the permit decision.
- Even if a local jurisdiction has an expedited review for participants in the TDR program, some permits require coordination, comment and review by other agencies at the state and federal levels. If the other reviewing agencies do not have an expedited and/or streamlined process for the TDR participant or “honor” the incentive, it still might get slowed down in review time and process.

CLEAR, FIXED AND CERTAIN TRANSFER RATIOS

Clear, fixed and certain transfer ratios are essential to developer certainty. Transfer ratios need to be clearly defined in development regulations so that they are easily understood by a developer and the community.

Under the King County program, the zoning code is structured with a minimum base density and a maximum density that is 150% of the base. Developers can use TDR to increase the density of their projects up to but not exceeding the maximum allowed density. For example, in the R-4 zone, a developer can increase the density of their project from the base minimum of 4 units per acre to the maximum of 6 units per acre with the purchase of one TDR credit, if it can fit on the site within physical development restrictions (the Transfer Ratio is 1 TDR = 2 additional lots). Approval is subject to hearing examiner review, but it is simply a review of compliance with the development code.

In another example in the City of Issaquah, one TDR credit from King County buys a developer the right to build units that generate one p.m. peak hour trip, cover 2,000 square feet of additional impervious surface, or build 2,000 square feet of gross floor area above the base or maximum building height.

In the Winter 2009 edition of the Journal of the American Planning Association, Rick Pruetz lists “success factors” for TDR programs based on a literature search he and Noah Standridge conducted. In one of the most successful factors they found, he states:

Factor 6: Ensuring That Developers Will Be Able to Use TDR. Some TDR programs flounder because developers are not sure they will be granted bonus density when they choose the TDR option. Communities can give developers greater certainty by using receiving-site zoning that eliminates or minimizes discretionary approvals. In these programs, developers know that they will be granted maximum density if they comply with all zoning regulations including the TDR requirements. This certainty often motivates the development community to support the adoption of TDR, since developers dread an approval process that subjects them to delay, reduced density, unanticipated costs, and uncertainty about whether or not their projects will be approved at all. *[Emphasis added]*

The transfer ratio should be clearly defined for the developer to estimate what the financial impact will be to a project if TDR credits are purchased and used in the project. Thus, transfer ratios should be fixed in regulation so they cannot be easily changed while a developer is considering or proposing a project. A developer needs a clearly fixed ratio that is certain and can therefore be vested to in a complete application without additional approval.

Finally, a City can offer a pre-established relationship with sending area landowners. Being able to introduce the most likely selling sending area landowners to the developers at a lunch or kitchen table meeting goes a long way, especially if the seller is up on the program details.

CLEAR AND SIMPLE REGULATIONS, FORMS, AND LEGAL DOCUMENTS

Clear and simple regulations, administrative forms, and legal documents that are easy to use will increase clarity and make developers more interested in participating. A “cookbook” of boilerplate documents can help to make the process more predictable.





III. “Up Front” Environmental Review of Receiving Areas – Methods of Defining SEPA Mitigation

One incentive to use TDR credits that a city can offer developers is to conduct up front environmental review in conjunction with the designation of and planning for a TDR receiving area that predefines mitigation for development in the area. The review would include and address any impacts to the natural or built environment that will be generated by allowed development, including a development project receiving extra development capacity by using a TDR credit. A study recently completed by the Department of Commerce in July 2010, *State Environmental Policy Act Case Studies*, found that predefined mitigation in all eight case study cities resulted in greater certainty and predictability for developers, and a decrease in the number and scale of required environmental assessments and technical studies at the project level. As described below, up-front environmental review, or defined mitigation, can take a variety of forms under SEPA.

INTEGRATED GMA PLAN/SEPA DOCUMENT

A city or county can develop a combined environmental review document for a TDR receiving area - Environmental Impact Statement (EIS), supplemental EIS (SEIS), or expanded checklist - and growth management comprehensive or subarea plan in one document. The document satisfies the requirements of both GMA and SEPA, evaluating the environmental consequences of the proposed land use plan in the TDR receiving area compared to the alternatives. The adopted document is then used as a basis for requiring identified (defined) mitigation for projects, including projects using TDR, that implement the plan.

While not a TDR receiving city, the City of Colville’s city-wide integrated EIS and comprehensive plan adopted in 1997 demonstrates the value of up-front environmental analysis. The integrated SEPA analysis has allowed city to begin to address stormwater, wetland and soil issues that created problems historically. The City is able to parallel SEPA and development review to reduce time-to-permit in most cases. Redevelopment is occurring at higher intensity and has complemented downtown revitalization efforts.

The City of Arlington is working on an integrated document for a West Arlington subarea plan that will designate the area as a TDR receiving area. The City wants to conserve farmland in the Stillaguamish Valley adjacent to the City.

PLAN-LEVEL ‘NON-PROJECT’ SEPA DOCUMENT

A separate document containing an environmental review and mitigation for a subarea plan – again, an EIS, SEIS, or expanded checklist - that includes a TDR receiving area can also be developed. The adopted SEPA document can be used as a basis for requiring identified mitigation for projects that implement the plan, including projects using TDR.

The City of Wenatchee capitalized on a non-project EIS and SEIS that were completed for a GMA Comprehensive Plan by adopting predefined development mitigation and development thresholds to reduce use of project-level SEPA review. The Riverfront Subarea Plan had extensive citizen and developer involvement. The City now updates capital facility system plans and monitors use thresholds in order to facilitate effective detailed predefined mitigation conditions. The SEPA process is conducted in parallel with the development permit process to reduce overall time-to-permit.

PLANNED ACTIONS

SEPA allows jurisdictions to provide an even more streamlined environmental review process for permits than the two previous processes described by performing a more detailed environmental review to assess the impacts of a TDR receiving area being built to maximum zoned capacity. Designating planned actions and adopting a planned action ordinance requires more work up front on the part of the government, but can yield the unique result of making subsequent participation in the TDR program easier.

Under RCW 43.21C.031 (Significant impacts), a local government creates an area-wide development plan with SEPA environmental review. The SEPA review identifies probable impacts, appropriate mitigation, and up-front development conditions for all build out, that would include use of TDR. Subsequent proposed development projects in the area are reviewed for consistency with the development conditions. If found consistent, projects are considered “planned actions” that do not require further individual SEPA review. Consequently, they are not subject to appeal under SEPA. The savings in time and money to developers can be substantial.

The SEPA case studies demonstrate that as predefined mitigation conditions increase, extensive project level SEPA decreases. The result is decreased time-to-permit, cost and risk for developers. Planned actions provide a high level of defined mitigation that would provide certainty and decreased costs for developers choosing to use TDR.

A number of jurisdictions have used planned actions to predefine mitigation and streamline the permit process. The City of Everett adopted the first planned action in the state for Southwest Everett/Paine Field in 1996. As of 2010, 90 percent of buildable land has been developed. The total estimated assessed value of investment at \$100 per square foot of floor area is \$390 million, increasing tax base.

Planned actions provide a powerful incentive to developers that can be used in conjunction with TDR. The City of Snohomish recently adopted a subarea plan and planned action ordinance for the Pilchuck District that includes TDR. The Pilchuck District is a mixed use area adjacent to downtown and the Pilchuck River. The vision for the Pilchuck District is to be a lively, walkable neighborhood of shops, personal and business services, offices, single-family homes, townhouses, and stacked flat apartments.

The cities of Normandy Park and Puyallup are working on planned actions for TDR receiving area subarea planning.

ESHB 2538 SUBAREA PLANNING FOR HIGH-DENSITY URBAN DEVELOPMENT

Provisions for SEPA environmental review of a qualifying comprehensive plan element or subarea plan that leads to up-front development conditions and mitigation requirements were enacted by the Legislature and became effective June 10, 2010. Use of subarea planning for high-density urban development under ESHB 2538 is encouraged for a TDR receiving area. The statute requires a city to consider establishing a TDR program in consultation with the county where the city is located. If the city decides not to establish a TDR program, it must state in the record its reasons for not doing so.

The provisions are similar to a planned action, but are limited to:

- Cities with a population greater than 5,000 and to areas that are either:
- Designated as mixed-use or urban centers; or





- Within one-half mile of a major transit stop zoned with an average minimum density of 15 dwelling units per acre.
- Cities east of the Cascade mountains located in a county with a population of 230,000 or less and areas within mixed-use or urban centers. The optional plans and regulations must be consistent with existing GMA plans and regulations, and must enhance pedestrian, bicycle, transit or other non-vehicular transportation methods.

For up to 10 years after an EIS is completed, projects that are consistent with the comprehensive plan element or subarea plan and development regulations do not require additional SEPA review and are not subject to administrative or judicial appeals under SEPA. To recover the costs of the up-front environmental review, a city is authorized to recover a portion of the non-project EIS cost by assessing fees for development that makes use of and benefits from the non-project EIS.

CATEGORICAL EXEMPTION FOR INFILL DEVELOPMENT

Another option under SEPA for TDR receiving areas is a categorical exemption for infill projects that meet the requirements of RCW 43.21C.229. Jurisdictions need to adopt these into their development regulations and they can adopt levels at or below those in the RCW. This tool can be used in conjunction with the up-front environmental review options listed previously.

Projects that are categorically exempt are not required to go through environmental review under SEPA, eliminating the time and cost of review and any appeals. A city or county may categorically exempt development that is new residential or mixed-use development proposed to fill in a designated urban growth area where current density and intensity of use in the area is lower than called for in the goals and policies of the applicable comprehensive plan. An environmental impact statement must have been prepared in conjunction with the comprehensive plan. A city or county with a designated receiving area that meets this requirement could categorically exempt projects that use TDR to meet comprehensive plan density and intensity goals.

Key findings from the *SEPA Case Studies* demonstrate the following:

Advantages

- Subareas using up-front environmental review experienced 60% to 107% of planned development. For all eight subareas, predefined mitigation is estimated to have saved private developers from \$8.8 to \$35.2 million, and public developers from \$2.8 to \$11 million in opportunity costs. A key concept in economics and business decision analysis, opportunity cost is the financial benefit that can be gained from the next best opportunity for the use of an asset.
- Predefined mitigation resulted in greater certainty and predictability for all eight subareas. Certainty and predictability are an important component to redevelopment anywhere, but especially TDR receiving areas.
- All case study cities reported an increase in certainty and predictability for developers, especially when potential appeal processes are complete and mitigation “triggers” are defined.
- All developers reported reduced risk.
- All cities reported decreases in the number and scale of required environmental assessments and technical studies.
- Time and cost savings were reported for developers and cities – that would increase the benefits of TDR for both developers and cities.

Continued—Advantages of Up Front” Environmental Review of Receiving Areas...

- Time savings ranged from five weeks to four months. Reductions translated into decreases in either pre- or post-development application time and cost to complete environmental reviews and technical studies.
- All cities reported decreases in public costs to process applications due to the decreased scope of required studies. The opportunity cost savings in permit processing time for public projects ranged from \$35,416 to \$1,666,666 for one month and ranged from \$141,666 to \$6,666,666 for four months.
- More effective planning and greater community engagement – community buy in for TDR is key to political will and a successful market.
- Six cities reported more meaningful community engagement, including two examples of the use of planned actions to address significant concerns by residents about increases in density.
- Four cities reported that predefined mitigation provided a vehicle for improving planning, uniformity in impact mitigation, and inter-jurisdictional relationships.
- Several cities phased in additional mitigation over time as pre-specified development or impact thresholds were exceeded.
- Predefined mitigation spurred development, increasing tax revenues – another benefit that cities could experience with TDR.
- All cities reported using predefined mitigation as part of a package of marketing tools to encourage development or redevelopment.
- In all cases, property, sales, B&O and/or real estate tax revenue increased for local and state government from new development.
- Two cities used predefined development conditions as an incentive for redevelopment or development of “marginal” or “higher risk” areas by a wider range of companies or developers – a key to successful TDR is low risk receiving areas.

Disadvantages

- The city or county bears the burden of initial time and cost of this up-front environmental review. The biggest barrier to expanded usage has been up-front costs to cities and “first-in” developers.
- The city or county will need to ensure the public is engaged in the designation of the receiving area and environmental analysis, and understands future development potential, as they will not have a significant opportunity to engage in the permit decision through a public hearing. They will have no opportunity to appeal the permit if the proposed development is consistent with a planned action designation or 2538 subarea plan.



OVERVIEW OF ENVIRONMENTAL REVIEW TOOLS

Table 1 provides a summary comparison of key components of the environmental review tools that can be used to streamline the permit process for TDR under SEPA.

Table 1: Summary of SEPA Up-Front Environmental Review Tools

	Integrated GMA/SEPA Document	Plan-Level Non Project SEPA Document	Planned Actions	ESHB 2538 Subarea Planning	Categorical Exemption for Infill
Geographic area of Planning	Entire jurisdiction or subarea	Entire jurisdiction or subarea	Comprehensive plan, subarea plan, fully contained community, master planned resort, master planned development, or phased project. Must be in a UGA and cannot be the entire jurisdiction	Designated as mixed-use or urban centers; or within one-half mile of a major transit stop	Area within the UGA where current density and intensity of use in the area is lower than called for in the goals and policies of the comprehensive plan
Level of Pre-defined Mitigations	Will vary with the level of analysis	Will vary with the level of analysis	High	High	Not applicable
Is the Document Appealable under SEPA	Yes	Yes	Planned action EIS is appealable - actions consistent with the plan are not	No appeals of actions consistent with EIS for 10 years	No, only EIS with comprehensive or subarea plan can be appealed
Additional review Required for Permits	Depends upon level of environmental analysis in document	Depends upon level of environmental analysis in document	No, not if action is consistent with the plan	No additional review of projects for 10 years	No review required
Timeframe of document validity	Depends on underlying document	Depends on underlying document	Depends on underlying document	10 years	
Restrictions on Eligibility	Jurisdictions fully planning under GMA	All cities and counties	Jurisdictions fully planning under GMA	Cities with a population greater than 5,000, and cities east of the Cascade mountains located in a county with a population of 230,000 or less	Jurisdictions fully planning under GMA
Latecomer Fees	Not allowed	Not allowed	Not allowed	Allowed to recover a portion of the non-project EIS cost	Not allowed

IV. Subarea Planning

Subarea planning for a TDR receiving area benefits the community and developers by providing a process to gain community buy-in to development with TDR. The process provides more certainty for developers and the community. The planning process allows the community to discuss what types of development they would like to see in the plan and to discuss TDR as a tool for developers to implement the plan. Subarea planning also provides a process that can be used to conduct more detailed up front environmental review under SEPA.

An excellent example of subarea planning that includes a TDR receiving area and involved extensive environmental review is the Bel-Red Corridor subarea plan adopted by the City of Bellevue. In late 2005, the City began working with businesses and residents to determine future land uses in the corridor, as well as the area's role in the City's overall growth and economic development. The plan adopted in 2009 establishes a vision for new mixed use neighborhoods supported by light rail, new streets, parks and open space. Zoning incentives for developers include the purchase of TDR credits from sending sites located in King County's unincorporated rural and resource areas.

As noted above related to Planned Actions under SEPA, the City of Snohomish adopted its subarea plan and planned action ordinance for the Pilchuck District that is a designated receiving area. The Cities of Normandy Park, Mountlake Terrace, Arlington, Issaquah, Puyallup, and Tacoma are all working on subarea plans for TDR receiving areas. All of these cities will be doing some version of up front environmental review in conjunction with their subarea plans.

Advantages

- Subarea planning provides a process for the community to participate and gain community buy-in for future development, including increased density or intensity with the purchase of TDR credits.
- Subarea planning, especially with up-front SEPA review, provides more certainty to developers.

Disadvantages

- As with up-front environmental review, the city or county bears the burden of initial time and cost.

V. Infrastructure and Public Amenities

BASIC INFRASTRUCTURE INVESTMENTS

Having infrastructure in place and providing public amenities are important incentives for developers, and are key to creating attractive compact communities in receiving areas. The public provision of infrastructure and amenities in TDR receiving areas will go a long way in attracting development.

Advantages

- Increased density and intensity of development is complimented with amenities and infrastructure that improve the quality of life in the community.
- Infrastructure and public amenities encourage economic development.
 - The community will be more willing to accept increased density and intensity with adequate infrastructure and public amenities.

Disadvantages

- Public funding for infrastructure is limited, especially in the current economy.
- Communities often find it difficult to finance infrastructure ahead of growth.





LANDSCAPE CONSERVATION AND LOCAL INFRASTRUCTURE PROGRAM

Legislation passed by the legislature and signed into law by the governor in 2011 provides a financing tool for certain cities in King, Pierce, and Snohomish Counties to invest in infrastructure in designated TDR receiving areas. Eligible cities are cities with a population and employment of 22,500 or more in the three counties. Consistent with the regional TDR program in Chapter 43.362 RCW, transfers must be from county sending areas to incorporated city receiving areas.

King, Pierce and Snohomish Counties must calculate the number of development rights from agricultural and forest land of long-term commercial significance eligible for transfer to receiving areas as of January 2011. Counties that have conserved at least 50% of their agricultural and forest land of long-term commercial significance may identify an additional 1,500 development rights from designated rural land with high conservation values. The counties must report the total number of transferable development rights to the Puget Sound Regional Council (PSRC) by September 1, 2011. In consultation with the eligible counties and receiving cities, PSRC must allocate the development rights among the eligible receiving cities based on growth targets, as determined by established growth management processes, and, if appropriate, other relevant factors.

A city may choose to participate in the program by accepting all or at least 20% of its allocated share of development rights, adopting a plan for infrastructure in the receiving area sufficient to utilize its TDR obligation, and creating one or more local infrastructure project areas. The bill provides an incentive for cities to agree to accept more than 20% of their allotment of TDR (from PSRC's process) – or more than 20% for their “sponsoring city allocated share”. The city may receive proportionately more tax revenues if they accept a higher percentage of the allocated share. A city may receive an amount equal to the sponsoring city ratio (percentage of the allocated share that the city has planned to receive in the receiving area/local infrastructure project area) multiplied by 75% of any increase in the assessed value of real property in the local infrastructure project area. If the ratio is low, the amount the city receives is decreased. If the ratio is high (100% for example), the city will receive the full 75%.

In the second calendar year following the creation of a local infrastructure project area, the city will receive property tax receipts from the area as follows:

- If the city has issued building permits that use at least 25% of the development rights it has agreed to accept, or has purchased the same amount of development rights, it may access the increase in property tax revenues for 10 years.
- If at least 50% of the development rights have been used or purchased by the 10th year, the city may access the increase in revenues for an additional five years, or 15 years total.
- If at least 75% of the development rights have been used or purchased by the 15th year, the city may access the increase in revenues for an additional five years, or 20 years total.
- If at least 100% of the development rights have been used or purchased by the 20th year, the city may access the increase in revenues for an additional five years, or 25 years total.

If a city has adopted the multifamily tax exemption (discussed below) in designated TDR receiving areas, it will need to consider what impact the tax exemption might have on future expected tax increases for purposes of the Landscape Conservation and Local Infrastructure program (LCLIP). However, it should be noted that multifamily tax credits cover only the housing structures (not the land or parking), and are for either 8 or 12 years. The LCLIP program might be for 20 years. Commercial uses are not included in the tax exemption and would therefore retain tax generating potential throughout the program.

Continued—Landscape Conservation and Local Infrastructure Program...

Advantages:

- The program provides an additional financing tool to cities for infrastructure in receiving areas.
- The program provides an incentive for cities to participate in regional TDR.
- The program benefit to developers is: (1) increased value to a project (e.g. adjacent public plaza or pocket park); and/or (2) decreased cost of development to pay for infrastructure.

Disadvantages:

- The program requirements are complicated to implement.
- The program cannot be used in areas that are already designated for similar tax increment financing type tools such as the Local Infrastructure Financing Tool (LIFT).

VI. Tax and Fee Policies

MULTIFAMILY TAX EXEMPTION

Cities with a certain size population may adopt property tax exemptions for multifamily housing development in residential targeted areas. The exemption is for up to eight years. However, if the applicant commits to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households, the exemption is for twelve years. Cities meeting the requirements of the statute can choose to provide a multifamily tax exemption for TDR receiving areas.

The City of Tacoma established a successful tax exemption program to stimulate multifamily housing within its 17 mixed use centers. The City has subsequently designated these mixed use centers as TDR receiving areas for when the City adopts a TDR program.

Advantages

- Receiving areas developers have the added incentive of property tax savings for the first 8 or 12 years.

Disadvantages

- The statute provides for authority to allow multifamily tax exemptions in residential targeted areas, but does not provide explicit authority for limiting use of the tax exemption to developers using TDR.
- Designation of residential targeted areas is limited to urban centers that meet specific criteria.

IMPACT FEE WAIVERS

Under the GMA, cities and counties have the option to impose impact fees for public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. Impact fees that have been adopted for facilities in a TDR receiving area may be waived by the city or county for projects using TDR.

Advantages

- Any waiver of a fee results in a savings of time and cost for a developer.

Disadvantages

- A waiver of the fee will require the city or county to find another source of funding or use the general fund to back fill for the revenue they waived to pay for the infrastructure to support development.





VII. Other Streamlining Options

PROVIDE PERMIT PROCESSING PRECEDENCE FOR TDR

Cities or counties have the option of providing that permit applications using TDR be given precedence (i.e., move to the front of the line) for permit processing or being scheduled for hearing.

Advantages

- Anything that saves time will save costs for the developer.
- There is no cost to the city or county.

Disadvantages

- This could push a jurisdiction beyond the local-choice 120 day project permit review requirement.
- Politically, others ahead in line may not appreciate this approach.

DELAY FEE PAYMENTS

Applicants using TDR could be allowed to pay fees as late as until the time of certificate of occupancy.

Advantages

- Delays costs for the developer.

Disadvantages

- This could be a revenue issue for local government, especially if they are fee-based.
- Fees could delay building the infrastructure needed to support development with TDR.
- Fees may be needed for schools or other special purpose districts that are not willing to delay payment.
- A buyer of the property may be surprised if they can't occupy the premises until the fees are paid.

VIII. Conclusions

Local governments have a variety of incentives to choose from to encourage developers to participate in TDR and they should not limit themselves to any one incentive. Zoning incentives can and should be combined with permitting or other incentives, but should be provided in an easy to understand menu. Up front environmental review and subarea plans are very useful tools for establishing the proper zoning incentives and streamlining the permit and environmental review process for permits using TDR.

TDR zoning incentives should be structured so that they do not compete with other zoning incentives. A community will need to look at its priorities and structure incentives around TDR and other goals it has identified, such as affordable housing. And, jurisdictions can look to the existing TDR programs for guidance on how to do this.

A key barrier to any successful TDR program is creating the market for development with TDR credits. Zoning incentives should be based on a market analysis to ensure TDR policies and regulations are responding to what the market wants. Good planning and environmental review will provide the community engagement and buy in, and context for the market.

Finally, a strong TDR program will include infrastructure investment in receiving areas. Although this can be a challenge, many cities planning for TDR receiving areas in King, Pierce and Snohomish Counties have a new financing tool in the Landscape Conservation and Local Infrastructure Program.



Endnotes

1. *What Makes Transfer of Development Rights Work?: Success Factors from Research and Practice*, Pruetz and Standridge, Journal of the American Planning Association, Volume 75, No. 1, Winter 2009.
2. <http://www.ci.bellevue.wa.us/pdf/PCD/Ord-5874.pdf>, pages 49 – 57.
3. <http://www.ci.sammamish.wa.us/departments/communitydevelopment/TownCenter.aspx#>
4. See <http://www.seattle.gov/housing/incentives/TDRbonus.htm> for more information on the Seattle program.
5. <http://www.ci.issaquah.wa.us/page.asp?navid=836>
6. See endnote 1.
7. [*State Environmental Policy Act Case Studies, July 2010, Department of Commerce Growth Management Services.*](#)
8. http://www.ci.snohomish.wa.us/PilchuckDistrict/Pilchuck_Index.htm
9. SHB 2538; see RCW 43.21C.420 and 82.02.020.
10. [*State Environmental Policy Act Case Studies, July 2010, Department of Commerce Growth Management Services.*](#)
11. <http://www.ci.bellevue.wa.us/pdf/PCD/Ord-5874.pdf>, pages 50 – 57.
12. [ESSB 5253](#), Chapter 318 Laws of 2011, amending RCW 36.70A.080 and creating a new section in Chapter 39 RCW.
13. Eligible cities under RCW 84.14.010(2) are “(a) a city or town with a population of at least fifteen thousand, (b) the largest city or town, if there is no city or town with a population of at least fifteen thousand, located in a county planning under the growth management act, or (c) a city or town with a population of at least five thousand located in a county subject to the provisions of RCW [36.70A.215](#).”
14. RCW 84.14.010 (16) defines an urban center to be a compact identifiable district where urban residents may obtain a variety of products and services and that meets statutory criteria for existing business establishments, adequate public facilities, and a mix of uses and activities.
15. Chapter 82.02 RCW

Learn More About the Regional TDR Alliance at: www.commerce.wa.gov/tldr

The Regional TDR Alliance’s partners include King, Kitsap, Pierce and Snohomish Counties, the Washington State Department of Commerce, the Puget Sound Regional Council, and the Cascade Land Conservancy.